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|  | NATIONAL OCEAN SERVICE | POLICY 0300-01 | VERSION 1.0 |
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| | AUTHORIZED BY:  W. Russell Callender, Ph.D., NOAA Acting Assistant Administrator, National Ocean Service | REVIEW DATE 12/1/17 | |
| | | RESPONSIBLE POSITION NOS Chief of Staff | |

ENVIRONMENTAL COMPLIANCE PROGRAM POLICY

SECTION 1. PURPOSE

01. To establish requirements and responsibilities for the implementation of an Environmental Compliance Program for the National Oceanic and Atmospheric Administration's (NOAA), National Ocean Service (NOS).

SECTION 2. AUTHORITIES AND REFERENCES

01. The authorities listed below are the regulatory drivers for the policies established in this Policy.

- a. Deputy Under Secretary for Operations Memorandum, "Promoting Compliance with NOAAs Environmental Statutes", dated August 22, 2014
- b. National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq.
- c. Council of Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, as codified at 40 CFR Parts 1500 to 1508
- d. NAO 216-6 "Environmental Review Procedures for Implementing the National Environmental Policy Act", dated June 30, 1999
- e. Executive Order 12114 Environmental Effects Aboard of Major Federal Actions, dated January 4, 1979
- f. DAO 216-12 "Environmental Effects Abroad of Major Federal Actions", dated March 10, 1983.
- g. NAO 216-17, "NOAA Environmental Compliance Program", dated October 5, 1998

SECTION 3. BACKGROUND

01. NOS and its Program and Staff Offices (P/SOs) engage in a wide range of activities that have the potential to impact the environment. These activities include things such as: funding and conducting scientific research; conservation, restoration and monitoring work; observations and surveys.

02. NOS P/SOs are responsible for ensuring their activities are carried out in compliance with references (a) through (d) and all applicable federal environmental regulations and Executive Orders (EOs), including the Marine Mammal Protection Act

(MMPA), National Environmental Policy Act (NEPA), Endangered Species Act (ESA), Magnuson-Stevens Act (MSA), Marine Debris Act (MDA), National Marine Sanctuaries Act (NMSA), and the National Historic Preservation Act (NHPA). Compliance with these federal environmental laws and regulations ensure that NOAA considers the impact on the environment of proposed actions, carries out necessary consultations, and obtains permits, as needed.

03. The NOAA Deputy Under Secretary for Operations (DUS/O) issued reference (a) directing Line Offices (LOs) to take specific and immediate steps to ensure compliance with applicable EOs, federal, state, and local environmental laws and regulations.

04. NOS and its P/SOs must establish and fully implement a comprehensive program to ensure long-term environmental compliance by:

- a. Clarifying NOS and P/SOs roles and responsibilities;
- b. Incorporate all applicable federal laws and regulatory requirements (i.e., permits and consultations) in environmental analysis; and
- c. Completing all required compliance documentation¹ covering NOS activities.

SECTION 4. DEFINITIONS

01. **Environmental compliance** is ensuring that activities are planned and executed in accordance with all applicable EOs, federal, state, and local environmental laws and regulations.

02. **Environmental analysis and decision documentation** includes Memorandum for Records (MFRs) to include Categorical Exclusions (CEs) and EA/EIS inclusions, Environmental Assessments (EAs), Environmental Impact Statements (EISs), Programmatic EAs/EISs, Findings of No Significant Impacts (FONSI), and Records of Decisions (RODs).

SECTION 5. APPLICABILITY

01. This policy applies to all NOS activities, including those executed, authorized, permitted, funded, and carried out by NOS P/SOs or by others on their behalf (i.e., other NOAA offices or through external funding vehicles²).

02. This policy applies to all NOS operating units. These units must ensure all activities are carried out in accordance with references (a) through (g), and all applicable EOs, federal, state, and local environmental laws and regulations. This policy establishes the roles and responsibilities for the execution of an environmental compliance program.

¹ Compliance documentation includes NEPA documents and additional assessments or documentation required by applicable EOs, federal, state, and local environmental laws and regulations or specified by a regulatory agency included, but are not limited to Biological Assessments, Permit Applications, and Sanctuary Resource Statements.

² External funding vehicles include Grants, Cooperative Agreements, Contracts, etc.

SECTION 6. KEY PROGRAM REQUIREMENTS

01. To achieve and maintain an effective environmental compliance program, NOS P/SOs must:

- a. Plan and allocate resources for Environmental Compliance Program implementation by:
 1. Determining and maintaining the appropriate number of qualified and dedicated staff needed to meet environmental compliance program goals.
 2. Ensuring all staff supporting environmental compliance efforts receive training needed to perform their duties in accordance with the NOS Environmental Compliance Training Policy.
- b. Establish, document, and conduct standard business practices and office policy to achieve and maintain environmental compliance by:
 1. Incorporating the following topics into P/SO environmental compliance policy: key program roles and responsibilities, internal coordination, tracking and reporting (i.e., permits, impact avoidance, mitigation measures, best management practices, training), documentation requirements, and oversight controls.
 2. Establishing standard business practices to ensure planned activities executed by NOS, or by other entities on behalf of NOS, will be in compliance with applicable EOs, federal, state, and local environmental laws and regulations prior to releasing funds.
 3. Maintaining a comprehensive Administrative Record to document the decision-making process and demonstrate the basis for decision.
 4. Obtaining, tracking, and reporting on required permits, authorizations, and best management practices for all NOS activities to include joint permits and authorizations³.
 5. Conducting routine audits and reviews of the environmental compliance program and associated documentation.
- c. Assess current and proposed activities for environmental compliance with all applicable EOs, federal, state, and local environmental laws and regulations by:
 1. Fully integrating environmental planning into program planning and execution, early in the decision-making process, using a systematic and interdisciplinary approach.

³ Any permits or authorizations required when using Office of Marine Aviation and Operations (OMAO) platforms should be jointly obtained in coordination with OMAO.

2. Preparing sound, clear, and comprehensive environmental analysis demonstrating compliance with the requirements of applicable EOs, federal, state, and local environmental laws and regulations.
3. Planning, managing, and completing environmental analysis documentation and consultations with other regulating agencies (i.e., informal or formal); such as other federal agencies, state agencies, tribal communities, and local agencies. All consultations must be documented within the Administrative Record (see 01.b.3).
4. Implementing best management practices to mitigate potential adverse impacts of NOS activities and as required by consultation efforts with other regulating agencies (i.e., informal or formal).

SECTION 7. ROLES AND RESPONSIBILITIES

01. **Assistant Administrator (AA)** will provide overall oversight for ensuring compliance for all NOS programs and activities. The AA shall:

- a. Act as the deciding official and signature authority on formal decision documentation⁴ within NOS regarding proposed actions for which an environmental analysis is performed, unless otherwise delegated.

02. **Deputy Assistant Administrator (DAA)** will assist the AA in ensuring the compliance for all NOS programs and activities. The DAA shall:

- a. Ensure the NOS Compliance Lead is properly executing the AA responsibilities regarding compliance with EOs, federal, state, and local environmental laws and regulations for all NOS P/SOs.
- b. Present recent progress made by NOS to the DUS/O on a quarterly basis during scheduled meetings of the NOAA Executive Panel (NEP).
- c. Ensure Office Directors (ODs) are accountable for P/SO environmental compliance.

03. **Chief of Staff (COS)** serves as the NOS Compliance Lead and will be responsible for Line Office environmental compliance program implementation. The COS shall:

- a. Oversee the development of a plan and schedule for bringing and maintaining NOS P/SOs into compliance.

⁴ Formal decision documentation includes Findings of No Significant Impacts (FONSI) and Records of Decisions (RODs). This does not apply to Categorical Exclusions.

- b. Maintain regular and direct access to the AA and Deputy AA to keep leadership informed on the status, issues, and challenges for all P/SOs environmental compliance efforts.
- c. Provide policy oversight and guidance to address NOS Environmental Compliance Program execution requirements.

04. General Counsel for Oceans and Coasts Section (GCOC) will provide legal counsel to NOS and its P/SOs. The GCOC shall:

- a. Assist with implementation of applicable EOs, federal, state, and local environmental laws and regulations such as NMSA, CZMA, Coast Survey Act, NEPA, and other statutes.
- b. Provide reviews of environmental analysis and decision documentation for legal sufficiency, as needed.
- c. Provide advice and guidance on environmental compliance issues, as needed.

05. Program or Staff Office Director (OD) will provide oversight and direction for office activities and actions regarding environmental compliance. The OD will be held accountable for their office's environmental compliance program in their annual performance plans. The OD shall:

- a. Establish a compliance program that meets all the Key Program Requirements described in Section 6 of this policy.
- b. Hire and maintain a minimum of one (1) full-time employee dedicated to the P/SO Environmental Compliance Coordinator position using a standard ZA0028 Position Description provided by NOS.
- c. Approve and sign MFRs for CEs and EA/EIS inclusion for NOS activities and permit decisions. This responsibility may only be delegated to the Deputy Director.
- d. Approve and sign requests for AA approval and signature of environmental analysis decision documents (i.e., FONSI and RODs). This responsibility may only be delegated to the program's Deputy Director.

06. Program or Staff Office Deputy Director (DD) will serve as the P/SO compliance lead and will be responsible for executing OD responsibilities as delegated. The DD shall:

- a. Inform the OD on the status, issues and challenges for the program's overall environmental compliance efforts.
- b. Ensure program environmental requirements and initiatives are being executed in accordance with this policy and any subsequent program office policy.

- c. Ensure environmental planning is fully integrated with program planning and execution.
- d. Ensure P/SO environmental reviews and analysis of funding vehicles (i.e., contracts, grants, agreements, and reimbursables) is conducted.

07. NOS Environmental Compliance Coordinator (ECC) will be responsible for NOS-wide alignment of policy, message, and action for NOS's environmental planning and compliance program implementation. The NOS ECC shall:

- a. Serve as the primary point of contact within the AA's Office for environmental compliance matters across NOS.
- b. Serve as the NOS compliance lead within the AA's Office for coordination with the National Marine Fisheries Service (NMFS), Headquarters (HQ), Office of Protected Resources (MMPA, ESA), and Office of Habitat Conservation (EFH).
- c. Collaborate with other NOAA LOs to ensure consistency in environmental compliance.
- d. Track and report on status of all NOS P/SOs environmental compliance efforts. Coordinate reporting of environmental compliance documentation, consultations, and dissemination of NOS reports.
- h. Coordinate P/SO inputs and submit consolidated NOS responses to requests for information or comments on other agency EISs, quarterly CE reporting, annual cooperating agency reporting, and annual conflict resolution reporting.
- e. Develop and maintain a NOS-wide environmental compliance schedule in coordination with P/SOs.
- f. Perform routine audits of environmental compliance documentation and conduct annual P/SO environmental compliance program reviews.
- g. Schedule and facilitate monthly NOS Environmental Compliance Workgroup meetings with P/SOs Environmental Compliance Coordinators.
- h. Participate and provide NOS input at the Support, Training, and Technical Understanding of the Environmental Statutes (STATUTES) Working Group meetings.
- i. Elevate potential compliance issues and challenges to the NOS COS, as necessary.

- j. Review NOS and P/SO draft environmental analysis and decision documentation⁵ prior to internal review coordination with GCOC, public comment periods, and prior to requests for AA signature.
- k. Coordinate NOS and P/SO reviews of environmental analysis and decision documentation with NMFS HQ Office of Protected Resources and the Office of Habitat Conservation, as appropriate.
- l. Prepare, disseminate, and maintain a central repository of NOS-wide environmental compliance policy, implementation guidance, templates, and training information.
- m. Develop, implement, and coordinate an environmental compliance training plan and requirements for P/SO management and designated staff.

08. P/SO Environmental Compliance Coordinators will be responsible for overall P/SO compliance program development, management, coordination and implementation. The P/SO Environmental Compliance Coordinator shall:

- a. Serve as the P/SO coordination lead and communications focal point for environmental compliance actions.
- b. Coordinate with the NOS ECC concerning NMFS HQ Office of Protected Resources (MMPA, ESA) and Office of Habitat Conservation (EFH) environmental compliance issues.
- c. Advise P/SO leadership on overall compliance efforts, best approach, and areas of risk or non-compliance.
- d. Develop and implement the P/SO's Environmental Compliance Program and its alignment with this policy.
- e. Coordinate and implement of the Key Program Requirements in Section 6 of this policy.
- f. Develop and coordinate the P/SO compliance plan and milestone schedule.
- g. Participate in monthly NOS Environmental Compliance Workgroup meetings and communicate the status of P/SO regulatory actions, approaches, or other compliance issues.
- h. Manage and maintain the P/SO's Administrative Records Plan for environmental compliance efforts to include all informal and formal communications related to consultations.
- i. Oversee the management of P/SO permits, through tracking and auditing of permits to ensure implementation and compliance with required mitigation

⁵ This does not apply to Program or Staff Office Memorandum for Records to include categorical exclusions, EA/EIS inclusion, or grant applications unless specifically requested by a Program/Staff Office.

measures, established best management practices, and regulatory reporting requirements.

- j. Provide input to the NOS ECC on requests for information or comments on other agency environmental analysis documentations, quarterly CE reporting, annual cooperating agency reporting, and annual conflict resolution reporting, as needed.
- k. Coordinate and maintain records for environmental compliance training for the P/SO.
- l. Provide support for P/SO environmental review and analysis of funding vehicles to include, contracts, grants, agreements, and reimbursables.
- m. Coordinate environmental compliance reviews for internal NOAA funding transfers in accordance with standard business practices.
- n. Identify and advise P/SO leadership on the need for environmental analysis early in the planning process for all NOS activities.
- o. Coordinate, manage, and prepare a schedule of milestones⁶ for the development of all environmental analysis documentation with P/SO environmental compliance staff for all NOS activities.
- p. Coordinate the review of draft environmental analysis and decision documentation⁷ with the NOS ECC prior to internal review coordination with GCOC, publishing for public reviews, and prior to requests for AA signature on decision documents (i.e., FONSI and RODs).

09. P/SO Technical Staff are those individuals that have been designated to support environmental compliance efforts in a P/SO other than the P/SO Environmental Compliance Coordinator. The P/SO Technical Staff shall:

- a. Assist P/SO Environmental Compliance Coordinators in development, review, and administrative recordkeeping of environmental compliance documents, permits and consultations, as appropriate.
- b. Assist P/SO Environmental Compliance Coordinators with reporting requirements and data calls or other inquires, as appropriate.

10. Federal Program Officers shall:

- a. Perform initial environmental reviews, prepare draft environmental compliance documentation, and conduct consultations with external regulatory agencies, as appropriate.

⁶ A schedule of milestones should be prepared for development and completion of all EAs, PEAs, EIS, and PEISs, as appropriate.

⁷ This does not apply to Program and Staff Office Memorandum for Records to include categorical exclusions, EA/EIS inclusion, or grant applications unless specifically requested by a Program/Staff Office.

- b. Monitor and report on environmental compliance for grants or cooperative agreements as required by the P/SO environmental compliance policy.

11. **Designated Regional and Field Office Staff** are those individuals assigned by their P/SO to coordinate regional and field activities at the project or activity level. The Designated Regional and Field Office Staff shall:

- a. Adhere to conditions of environmental compliance documentation for all applicable activities.
- b. Ensure required permits are obtained and any impact avoidance, mitigation measures, and/or established best management practices are implemented.
- c. Report on permit implementation and compliance status to P/SO Environmental Compliance Coordinator and as required by the permit terms.
- d. Provide information and assist as needed with preparing and processing environmental compliance documentation.

12. **Task Monitor/Contracting Officer Representatives (COR)** shall, in consultation with their P/SO Environmental Compliance Coordinators:

- a. Ensure contracts are reviewed for environmental compliance in accordance with P/SO standard business practices or policy.

SECTION 10. REPORTING

01. NOS' ability to efficiently and effectively sustain program missions and prevent issues early in the decision making process requires early awareness, proactive engagement, collaboration, alignment, resources, and planning. Maintaining consistent, strategic communication through routine reporting provides leadership situational awareness prior to official tasking or if decisions require leadership endorsement.

02. On becoming aware of incidental takes or environmental compliance violations, P/SOs must immediately notify the NOS ECC.

03. P/SOs shall develop and maintain a schedule of milestones for completion of all EAs, PEAs, EIS, PEISs, and headquarter level consultations, as appropriate. These schedules shall be updated and submitted to the NOS ECC monthly.

SECTION 11. ADMINISTRATIVE RECORD

01. Records created as a result of compliance with applicable EOs, federal, state, and local environmental laws and regulations, regardless of media and format, shall be managed in accordance with NOAAs Guidelines for Compiling an Agency Administrative Record. The administrative record should clearly demonstrate the basis for decision making and is a compilation of all materials directly or indirectly considered.

02. P/SOs must take responsibility for ensuring all final environmental compliance documentation (e.g., permits, biological opinions, consultations) and signed decision documents (e.g., CEs, MFRs, FONSI, RODs) are retained and accessible. Decision documents associated with grants or cooperative agreements may be maintained within Grants Online.